

MINUTES

INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS

MAY 27, 2009

I. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Dr. Welp called the meeting to order at 9:00 a.m. in the Indiana Government Center South, Conference Center - Room 1, 302 West Washington Street, Indianapolis, Indiana, and declared a quorum in accordance with Indiana Code § 15-5-1.1-6(c).

Board Members Present:

Ralph Welp, D.V.M. – Chairman
Dawn Frank, D.V.M. – Vice Chairman
Richard Headley, D.V.M.
Patricia Kovach, D.V.M.
Robin Waltz, D.V.M.
Bret Marsh, D.V.M., State Veterinarian
Susan Pedigo, R.V.T.
Frank Andrew, Consumer Member

Board Members Absent:

State Officials Present:

Cindy Vaught, Board Director, Professional Licensing Agency
Heather Holcraft, Case Manager, Professional Licensing Agency
Phillip Thompson, Deputy Attorney General, Office of the Attorney General

II. ADOPTION OF THE AGENDA

A motion was made and seconded to adopt the agenda, as amended.

HEADLEY/FRANK
Motion carried 7-0-0
Dr. Waltz was not present

III. ADOPTION OF THE MINUTES FROM THE MARCH 25, 2009 MEETING OF THE BOARD

A motion was made and seconded to adopt the minutes from the March 25, 2009 meeting of the Board.

HEADLEY/FRANK
Motion carried 7-0-0
Dr. Waltz was not present

IV. PRESENTATION

Dr. Dennis Feinberg and Dr. Mike Thomas, National Board of Veterinary Medical Examiners, are currently doing an outreach program to all states regarding the services offered. The NBVME maintains the item bank for the NAVLE examination which is used to license veterinarians in the state of Indiana. They contract with PROMETRIC examination centers for the administration of the examination. The Board had several questions regarding their organization.

V. APPEARANCES

A. RENEWAL

There were no renewal appearances.

B. PROBATIONARY

1. Rachel B. Clark, D.V.M., License No. 24003461A Administrative Cause No. 95 VB 007

Dr. Clark appeared before the Board, as requested, regarding her ongoing probationary status. Dr. Clark had no legal counsel present. This is Dr. Clark's second appearance since she has been reinstated. Dr. Clark indicated she has a torn rotator cuff on her right shoulder. She has had surgery for this and brought a report dated February 9, 2009 regarding her condition of tendonosis. They attempted to repair her condition with three pins attached to muscle. She now has very limited range in motion. She is currently in physical therapy and has to wait six months for another MRI. The Board asked about her employment and she stated she cannot work currently because of her medical condition. The last report received from her counselor, Jodi Behlmer at St. Vincent Mercy Counseling Street Center was December 2008. Dr. Clark stated that she saw Ms. Behlmer last week. Dr. Clark reported that her physician prescribed hydrocodone with Tylenol, tramadol and an antispasmodic for the pain. When asked by the Board who prescribed the Hydrocodone she is currently on, she stated her surgeon did. The Board is concerned that she failed to tell her doctors of her past drug addiction and probation status. Dr. Clark told the Board she would get a list of prescriptions for them. Dr. Clark said the prescriptions were given to her prior to her surgery. She also stated she called her doctor in excruciating pain and he told her he would prescribe her 10 mg. Hydrocodone, Ventinol and a pain pump in her arm to control the pain. The Board pointed out that her order states "no controlled substances" and that she is supposed to submit copies of all prescriptions which she did not. Dr. Clark said she also takes Tramadol on occasion. The Board's legal counsel, Mr. Thompson, advised that due to a change in circumstances they could open her probationary order for modification or issue an order to show cause for violation of the terms of the probationary order. He also stated she could ask for a voluntary indefinite suspension. When Dr. Clark is no longer in need of the controlled substances she could then ask for reinstatement of her license. Due to her profession she has had access to Tramadol during this probationary period. Dr. Clark agreed to sign a voluntary agreement for indefinite suspension of her license. She has been advised to tell her doctors about her drug addiction. She was also advised the Board cannot guarantee reinstatement of her license or to what the terms of probation maybe upon reinstatement. Dr. Clark indicated her address is still current.

Board Action: After discussion, a motion was made and seconded to accept verbal request from Dr. Clark stating she would voluntarily place her license on indefinite suspension.

ANDREWS/HEADLEY
Motion carried 7-0-0
Dr. Waltz was not present

2. Todd Cooney, D.V.M., License No. 24004650A

Dr. Cooney appeared before the Board, as requested, regarding his ongoing probationary status. Dr. Cooney stated that things were going great and has had no issues since the last meeting. All of Dr. Cooney's screens have come back 'negative'. Dr. Cooney's practice is primarily small animal medicine and some dairy cattle and horses. Reports from Rick Gustafson, ACSW, LCSE, have not been received for January and April 2009. The Board gave Dr. Cooney thirty (30) days in which to have the report submitted to the Board. The Board asked if he is in search of an associate veterinarian, in which he indicated he is. Dr. Cooney is scheduled to appear at the July 29, 2009 meeting.

3. Carol Dartz, D.V.M., License No. 24003804A

Dr. Dartz appeared before the Board, as requested, regarding her ongoing probationary status. She said her practice and everything is good. She currently has two (2) associate veterinarians. She indicated she still takes antabuse on occasion for stressful situations but it is very limited. Dr. Dartz is currently working approximately thirty-two (32) hours per week plus she also manages the practice. Dr. Dartz asked about petitioning to lift probation from her license. Mr. Thompson advised she send a letter to the Board requesting such and it was up to her if she wanted to bring counsel with her. The Board stated that if she submits her request soon she could possibly be scheduled on the July 29, 2009 agenda.

C. APPLICATIONS

1. Danielle C. Robb, R.V.T.

Danielle C. Robb did not appear as requested.

2. Amanda Lynn Conners, D.V.M.

Dr. Conners appeared before the Board, as requested, regarding her application for licensure as a veterinarian. Dr. Conners is a 2009 graduate from Purdue University and has taken and passed the NAVLE examination on December 4, 2008 and the law examination on May 12, 2009. On her application she answered "yes" to question #5b asking, "Have you ever been convicted of, pled guilty or nolo contendere to any offense, misdemeanor or felony in any state?" Dr. Conners explained ten years ago she was charged with underage alcohol consumption. Dr. Conners states she was at a bar when police came in and busted them for underage drinking. She completed all of the mandated requirements. She states she has had no issues since then and has not had a drink in six years. Dr. Conners showed the Board a copy of the court paperwork where the charge has been expunged from her record.

Board Action: After discussion, a motion was made and seconded to grant Dr. Conners a veterinary license.

WALTZ/ANDREW
Motion carried 8-0-0

3. Tara Anne Gunn, D.V.M.

Dr. Gunn appeared before the Board, as requested, regarding her application for licensure as a veterinarian. Dr. Gunn is a 2009 graduate from Purdue University and has taken and passed the NAVLE examination on December 3, 2008 and

the law examination on March 31, 2009. On her application she answered "yes" to question #4 asking, "Are you now being, or have you ever been treated for drug or alcohol abuse?" She states she was hospitalized for alcohol poisoning in 2001. She realized she was on a self-destructive path when the hospital called in a toxicosis specialist. Dr. Gunn relayed to the Board the reasoning behind this incident. She was not required to seek counseling but does so occasionally on her own. She also voluntarily attends AA meetings even though they were never court ordered. Dr. Gunn plans on a one year internship to specialize in avian and exotic animal practice. She gave assurance to the Board that she will not be back for alcohol abuse in the future.

Board Action: After discussion, a motion was made and seconded to grant Dr. Gunn a veterinary license.

ANDREW/HEADLEY
Motion carried 8-0-0

4. Eric James Herman, D.V.M.

Dr. Herman appeared before the Board, as requested, regarding his application for licensure as a veterinarian. Dr. Hermann is a 2009 graduate from Purdue University and has taken and passed the NAVLE examination on December 13, 2008 and the law examination on April 7, 2009. On his application he answered "yes" to question #5B asking, "Have you ever been convicted of, pled guilty or nolo contendere to any offense, misdemeanor or felony in any state?" Dr. Herman states that two years ago he was out with classmates drinking. He had a lapse in judgment and drove since he was the one that drank the least. He was pulled over by police and cited for driving under the influence of alcohol with a blood alcohol content of .12. He has completed all court requirements including community service at the Lafayette Zoo, paying all fines, attending alcohol classes and a 45 day driver's license suspension. He was not required to submit to any drug or alcohol screens. He states AA meetings opened his eyes and he assures the Board that he won't be back again. Dr. Herman says he has turned to working out to cope with stress and no longer drinks. Dr. Herman currently plans on a one year internship at a New York medical center and then practicing in small animal surgery.

Board Action: After discussion, a motion was made and seconded to grant Dr. Herman a veterinary license.

HEADLEY/ANDREW
Motion carried 8-0-0

5. Nolan Irl Zeide, D.V.M.

Dr. Zeide was requested to appear before the Board regarding his application for licensure as a veterinarian. Dr. Zeide did not appear. Notice of the next three meetings has been sent to him.

6. Carol Niemann, D.V.M.

Dr. Niemann appeared before the Board, as requested, regarding her application for licensure as a veterinarian. Dr. Niemann is a 2009 graduate of Purdue University and has taken and passed the law examination on May 12, 2009. On her application she answered "yes" to question #5B asking, "Have you ever been convicted of, pled guilty or nolo contendere to any offense, misdemeanor or felony

in any state?" Dr. Niemann states that in the summer of 2006 she met friends for dinner. She was pulled over and cited with driving under the influence of alcohol with a blood alcohol content of .10. She was ordered by the court to either attend alcohol classes or see a psychologist. She chose the psychologist. The court also ordered her driver's license to be suspended for a period of 45 days and to do community service at Goodwill. Dr. Niemann indicated to the board that she will be practicing small animal veterinary medicine at Columbia City Veterinary Clinic and assures the Board that she will not be back in front of them in the future. She said this has been a wake up call and she has moved closer to her family for support.

Board Action: After discussion, a motion was made and seconded to grant Dr. Niemann a veterinary license.

ANDREW/HEADLEY
Motion carried 8-0-0

VI. ADMINISTRATIVE RULE HEARING

A. LSA Document #08-679

Re: Fixed Practice Facilities and Veterinary Client Patient Relationship

Board Members Present:

Ralph Welp, D.V.M. – Chairman
Dawn Frank, D.V.M. – Vice Chairman
Richard Headley, D.V.M.
Patricia Kovach, D.V.M.
Robin Waltz, D.V.M.
Bret Marsh, D.V.M., State Veterinarian
Susan Pedigo, R.V.T.
Frank Andrew, Consumer Member

State Officials Present:

Cindy Vaught, Board Director, Professional Licensing Agency
Heather Hollcraft, Case Manager, Professional Licensing Agency
Phillip Thompson, Deputy Attorney General, Office of the Attorney General

Court Reporter: Felicia Warren

An administrative rule hearing was held in the matter of modifying the rules of fixed practice facility and removing the definition of veterinary client patient relationship. No one appeared from the public to offer testimony on the rule. The Board had no comment. Being no comments or amendments regarding the proposed rule, the Board voted.

Board Action: A motion was made and seconded, to adopt the proposed rule as read.

FRANK/HEADLEY
Motion carried 8-0-0

888 IAC 1.1-4-1 Fixed practice facilities; standards
Authority: IC 25-38.1-2-14; IC 25-38.1-2-23
Affected: IC 25-38.1-2

Sec. 1. For the purposes of 888 IAC 1.1-4-1, **this section**, "fixed practice facility" means a stationary facility established to provide examination, diagnosis, and health maintenance to

animals. Practitioners maintaining a fixed veterinary practice facility shall comply with the following standards:

(a) (1) If medical treatment is provided to animals, appropriate areas for such the treatment shall be available within the facility as well as and housing for treatment and convalescence.

(b) (2) If aseptic surgery is performed within the facility, the facility shall contain and use the following:

(1) (A) An area designated for surgery.

(2) (B) Adequate sterilization for the following:

(i) Instruments.

(ii) Gloves. and

(iii) Drapes.

(3) (C) Sterile instruments, gloves, and drapes.

(4) (D) Adequate lighting.

(5) (E) Adequate drugs and equipment readily available to handle surgical emergencies, including, but not limited to, the following:

(i) Endotracheal catheters. and

(ii) Oxygen or respiratory facilities.

(c) (3) The facility shall provide adequate heating and ventilation for the comfort of animals treated and housed within.

(d) (4) The facility shall be equipped with proper lighting in order that all parts thereof are clearly visible.

(e) (5) The facility shall comply with all applicable state and local ordinances, including, but not limited to, the following:

(1) (A) Hot and cold running water from a source approved by the appropriate authorities.

(2) (B) Adequate clean and orderly toilets and lavatories for personnel and clients.

(3) (C) Sanitary and esthetic aesthetic disposal of dead animals.

(f) (6) All supplies, including food and bedding, shall be stored in facilities which that adequately protect against:

(A) infestation;

(B) contamination; or

(C) deterioration.

Refrigeration shall be provided for all supplies that are of a perishable nature, including food, drugs, and biologicals.

(g) (7) Excrement shall be promptly removed and disposed of in an appropriate manner.

(h) (8) The:

(A) exterior of the facility shall be clean and in good repair; and

(B) surrounding grounds must be clean and well-maintained.

(i) (9) Appropriate exterior identification shall be posted to clearly indicate that the location is a veterinary practice facility.

(j) (10) All interior areas of the facility, including the:

(A) entrance;

(B) reception area;

(C) office;

(D) dispensing area; and

(E) examination rooms;

shall be clean, orderly, and free from hazards.

(k) (11) If grooming services are performed within the facility, the grooming area shall be clean and orderly.

(l) (12) The animal housing area shall be:

(A) clean;

(B) orderly; and

(C) well-lighted.

(m) (13) Exercise runs, if provided, shall be:

(A) clean;

(B) secure; and

(C) free of hazards.

(n) (14) The following equipment shall be available within the facility:

(1) (A) A lined waste receptacle.

(2) (B) A sink.

(3) (C) Disposable towels.

(4) (D) An adequate table with an impervious surface, capable of being disinfected after each examination.

- (5) (E) A stethoscope.
- (6) (F) A thermometer.
- (7) (G) A refrigerator.
- (8) (H) Other equipment appropriate to the type of practice.
- (e) (15) Laboratory equipment shall be:
 - (A) available within the facility; or shall be
 - (B) readily accessible.
- (p) (16) If radiological services are provided within the a fixed practice facility, the facility must contain the following: equipment shall be contained therein:
 - (1) (A) An x-ray machine.
 - (2) developing tanks.
 - (B) The ability to develop radiographic images.

However, if radiological services are not provided within the facility, appropriate arrangements shall must be made to provide these the services outside the facility.

(Indiana Board of Veterinary Medical Examiners; 888 IAC 1.1-4-1; filed Apr 26, 1988, 2:10 p.m.: 11 IR 3045; readopted filed Jul 18, 2001, 10:20 a.m.: 24 IR 4238; readopted filed Jul 19, 2007, 12:53 p.m.: 20070808-IR-88807007ORFA)

SECTION 2. 888 IAC 1.1-5-1 IS AMENDED TO READ AS FOLLOWS:

888 IAC 1.1-5-1 Standards of practice

Authority: IC 25-38.1-2-14; IC 25-38.1-2-23

Affected: IC 25-1-9

Sec. 1. A veterinarian may be found guilty of the incompetent practice of veterinary medicine and may be disciplined under IC 25-1-9 if the veterinarian does any of the following:

- (1) Fails to maintain written animal health records as defined by section 2 of this rule.
- (2) Dispenses or prescribes drugs or therapy unless a veterinarian-client-patient relationship has been established. As used in this subdivision, "veterinarian-client-patient relationship" means the following:
 - (A) The veterinarian has assumed the responsibility for making clinical judgments regarding the health of the animal and the need for medical treatment, and the client has agreed to follow the veterinarian's instructions.
 - (B) The veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal, or by medically appropriate and timely visits to the premises where the animal is kept.
 - (C) The veterinarian is readily available or has arranged for emergency coverage, for follow-up evaluation in the event of adverse reactions, or the failure of the treatment regimen.
- (3) Knowingly provides prescription drugs or access to prescription drugs for use other than in the proper course of veterinary diagnosis or treatment.
- (4) Performs a treatment or procedure that is beyond the skill or knowledge of the practitioner.
- (5) Permits, delegates, or requires an employed veterinarian to:
 - (A) improperly perform the duties of an accredited veterinarian; or
 - (6) Permits, delegates, or requires an employed veterinarian to (B) perform services that would constitute a violation of standards provided by this section.

(Indiana Board of Veterinary Medical Examiners; 888 IAC 1.1-5-1; filed Apr 26, 1988, 2:10 p.m.: 11 IR 3046; filed Aug 11, 1989, 1:35 p.m.: 13 IR 86; filed Dec 27, 1993, 9:00 a.m.: 17 IR 1003; filed May 2, 2001, 10:05 a.m.: 24 IR 2707; readopted filed Jul 19, 2007, 12:53 p.m.: 20070808-IR-88807007ORFA)

VII. ADMINISTRATIVE HEARINGS

A. Benton Arihood, D.V.M., License No. 24003071A

Cause No. 2009 VB 0001

Re: Final Hearing

Board Members Present:

Ralph Welp, D.V.M. – Chairman
Dawn Frank, D.V.M. – Vice Chairman
Richard Headley, D.V.M.
Patricia Kovach, D.V.M.
Robin Waltz, D.V.M.
Bret Marsh, D.V.M., State Veterinarian
Susan Pedigo, R.V.T.
Frank Andrew, Consumer Member

State Officials Present:

Cindy Vaught, Board Director, Professional Licensing Agency
Heather Hollcraft, Case Manager, Professional Licensing Agency
Phillip Thompson, Deputy Attorney General, Office of the Attorney General

Attorney for the State:

Heather Kennedy, Deputy Attorney General, Office of the Attorney General

Court Report: Felicia Warren

A settlement conference was held earlier but no agreement was Reached. The Board will hold a full hearing on July 29, 2009.

B. Chad I. Kaluza, D.V.M., License No. 24006069A

Cause No. 2009 VB 0002

Re: Final Hearing

Board Members Present:

Ralph Welp, D.V.M. – Chairman
Dawn Frank, D.V.M. – Vice Chairman
Richard Headley, D.V.M.
Patricia Kovach, D.V.M.
Robin Waltz, D.V.M.
Bret Marsh, D.V.M., State Veterinarian
Susan Pedigo, R.V.T.
Frank Andrew, Consumer Member

State Officials Present:

Cindy Vaught, Board Director, Professional Licensing Agency
Heather Hollcraft, Case Manager, Professional Licensing Agency
Phillip Thompson, Deputy Attorney General, Office of the Attorney General

Attorney for the State:

Mark Mader, Deputy Attorney General, Office of the Attorney General

Court Report: Felicia Warren

Dr. Kaluza was called in and about the premises three (3) times but did not appear. The moved that the Board issued a notice of proposed default because he failed to appear.

Board Action: A motion was made and seconded to issue Notice of Proposed Default.

HEADLEY/ANDREW
Motion carried 8-0-0

At this time Mr. Mader presented evidence in this matter for the Board to consider issuing an emergency suspension. The Board took official notice of its records in this matter indicating that Respondent's veterinary license status was currently "Valid to practice while being reviewed". State's Exhibit 1 was introduced without objection at the hearing of the Respondent's veterinary license held May 27, 2009. Exhibit 1 consisted of Franchise records of Medical Management International, Inc. d/b/a Banfield, the Pet Hospital regarding franchisee, Chad I. Kaluza, DVM, for Charter Practice Hospital #1009. State's Exhibit 2 was introduced without objection, consisting of Certified court records from the Allen County Clerk's Office for Cause No. 02D04-0710-FC-000256. Finally, State's Exhibit 3, introduced without objection, contained the Certified Records from St. Joseph Hospital Emergency Room for Chad I. Kaluza for emergency room visits on September 30, 2007 and February 2, 2008.

Board Action: After consideration of the documentation submitted, a motion was made and seconded to issue Notice of Proposed Default.

HEADLEY/ANDREW
Motion carried 8-0-0

VIII. SETTLEMENT AGREEMENTS

There were no settlement agreements.

IX. NOTICE OF PROPOSED DEFAULT

There was no notice of proposed defaults.

X. DISCUSSION

A. American Association of Veterinary State Boards

Re: Association Activities and Updates for 2009

The Board took notice of the AAVSB newsletter.

B. American Association of Veterinary State Boards

Re: Veterinary Regulation News – May 2009

The Board took notice of the AAVSB newsletter.

C. American Veterinary Medical Association

Re: Committee on Veterinary Technician Education

The report indicated that Brown Mackie College located in Michigan City, Indiana has provisional accreditation.

D. NAVLE Examination Results

Re: April 2009

Ms. Vaught informed the Board there were 6 NAVLE candidates and of those, 5 passed and 1 failed.

E. American Association of Veterinary State Boards

Re: AAVSB Proposed Bylaws Changes

The Board took notice of the proposed by-laws change.

F. National Board Report

Re: May 2009

The Board took notice of the National Board report.

XI. APPLICATION REVIEW

A. Endorsement

There were no endorsement applications for the Board to review.

B. Examination

There were no examination applications for the Board to review.

C. North American Veterinary Licensing Examination (NAVLE)

There were no NAVLE applications for the Board to review

D. Professional Corporation

There were no professional corporation applications for the Board to review

XII. RENEWALS

There were no renewals before the Board.

XIII. PROBATIONARY REPORT

There were no probationary reports for the Board to review.

XIV. CONTINUING EDUCATION

A. Cincinnati Animal Referral and Emergency Center

Practice Management for the DVM

Cincinnati, Ohio

October 7, 2009

Hours Granted: 2

B. Fetch Academy

A Weekend with Jean Donaldson

Indianapolis, Indiana

June 13-14, 2009

Hours Granted: Denied – Content did not relate to the practice of veterinary medicine

C. Intervet Schering Plough Animal Health

8th Annual Swine Reproduction and Baseball Meeting

Chicago, Illinois

May 29, 2009

Hours Granted: 2

D. For the Animals

The Vital Force – Weekend Workshop in Classical Non-Speciatted Homeopathy
Danville, Indiana

Hours Granted: Hours not requested – Approved for 10 hours total

XV. REPORTS

A. Consumer Complaints

Dr. Waltz advised she had a pre-hearing conference prior to this meeting and it was decided that Dr. Arihood would be scheduled for a full board hearing.

B. Controlled Substances Advisory Committee- Dr. Kovach

Dr. Kovach had nothing to report at this time. The next meeting is scheduled for May 30, 2009.

C. State Veterinarian's Report – Dr. Marsh

- H1N1 is out of the news for now, however it is still a threat. They are still doing research on the swine population regarding this.
- Legislature passed the pet breeders bill. If a breeder has more than 20 breeding females they must be registered.
- TB in red deer near a cattle farm which is actually an elk TB strain has been found in southeastern Indiana.

XVI. OLD/NEW BUSINESS

There was no old or new business discussed by the Board.

XVII. OTHER ITEMS FOR CONSIDERATION

Ms. Vaught discussed the substance abuse program by the IVMA.

XVIII. ADJOURNMENT

There being no further business, and having completed its duties, the meeting of the Indiana Board of Veterinary Medical Examiners adjourned at 1:00 p.m.


Ralph Welp, D.V.M., Chairman

7-29-09
Date

Dawn Frank, D.V.M., Vice Chairman

Date